

Income derived by an exempt organization for the occasional use of its meeting hall constitutes rents from real property within the meaning of section 512(b)(3) of the Code and is excluded in determining unrelated business taxable income.

Advice has been requested whether amounts received by an organization exempt from Federal income tax under the circumstances set forth below constitute rents from real property within the meaning of section 512(b)(3) of the Internal Revenue Code of 1954.

An organization exempt from Federal income tax under section 501(a) of the Code, but subject to the tax imposed by section 511 of the Code, permits its members and outside individuals and groups to use its hall for a fee. The individuals or groups normally use the facilities for a single afternoon or evening but at the most for periods of two or three days. The agreement to use the facilities is usually verbal. Only utilities and janitorial services are provided.

Section 512(b)(3) of the Code provides that for the purpose of determining unrelated business taxable income, there shall be excluded all rents from real property (including personal property leased with the real property), and all deductions directly connected with such rents.

Under section 1.512(b)-1(c)(2) of the Income Tax Regulations, payments for the use or occupancy of rooms or other space in hotels, motels, and boarding houses where services are also rendered to the occupant to not constitute rentals from real estate. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways and lobbies, the collection of trash, etc., are not considered as services rendered to the occupant.

Since the charges in this case are made for the use and occupancy of space in real property and only utilities and janitorial services are provided, the receipts constitute rental income. The fact that the use is only for short periods of time does not destroy the character of the receipts. Accordingly, it is held that the income received constitutes rent from real property within the meaning of section 512(b)(3) of the Code and thus is excluded in determining unrelated business taxable income.